

Rules for Hiring Outside Consultants Under General Law, Chapter 44, Section 53G

G.L. Ch. 44 §53G requires Conservation Commissions imposing consultant fees for projects under the Wetlands Protection Act, non-zoning wetlands bylaws/ordinances or for proposals regarding use or change of use of municipal conservation land to adopt rules relative to the hiring of such consultants. This section provides a set of rules.

As provided by General Law, Chapter 44, Section 53G, the Town of Leverett Conservation Commission may impose reasonable fees for the employment of outside consultants, engaged by the Conservation Commission for specific expert services deemed necessary by the Commission to come to a final decision on an application submitted to the Conservation Commission pursuant to the requirements of the Wetlands Protection Act (GL, Ch. 131, Sec. 40), the Conservation Commission Act (GL, Ch. 40, Sec. 8C), or any other state or municipal statute, bylaw Article or regulation, as they may be amended or enacted from time to time. The Conservation Commission may also impose fees for other consultant services, related to application review, or permit conditioning or monitoring, under any of the above-referenced laws or regulations.

Funds received by the Conservation Commission pursuant to these rules shall be deposited with the Town of Leverett treasurer who shall establish a special account for this purpose. Expenditures from this special account may be made at the direction of the Conservation Commission without further appropriation as provided in General Law, Chapter 44, Section 53G. Expenditures from this account shall be made only in connection a specific project or projects for which a consultant fee has been collected from the applicant. Expenditures of accrued interest may also be used for these purposes.

Specific consultant services may include but are not limited to resource area survey and delineation, analysis of resource area values, hydrogeologic and drainage analysis, impacts on municipal conservation lands, and environmental or land use law. Services may also include on-site monitoring during construction, or other services related to the project deemed necessary by the Commission. The consultant shall be chosen by, and report only to, the Commission and/or its Administrator.

The Conservation Commission shall give written notice to the applicant of the selection of an outside consultant. Such notice shall state the identity of the consultant, the amount of the fee to be charged to the applicant, and a request for payment of said fee in its entirety. Such notice shall be deemed to have been given on the date it is mailed or delivered. No such costs or expenses shall be incurred by the applicant if the application or request is withdrawn within five days of the date notice is given.

The fee must be received in its entirety prior to the initiation of consulting services. The Commission may request additional consultant fees if necessary review requires a larger expenditure than originally anticipated or new information required additional consultant services. Failure by the applicant to pay the consultant fee specified by the Commission within ten (10) business days of the request for payment shall be cause for the Commission to determine that the application is administratively incomplete (except in the case of an appeal). The commission shall state such in a letter to the applicant, copied to the DEP. No additional review or action shall be taken on the permit request until the applicant has paid the requested fee. Failure by the applicant to pay the consultant fee specified by the Commission within ten (10) business days of the request for payment shall be cause for the Commission to deny the permit application.

The applicant may appeal the selection of the outside consultant to the Town of Leverett Select Board, who may disqualify the outside consultant selected only on the grounds that the consultant has a conflict of interest or does not possess the minimum required qualifications. The minimum qualifications shall consist of either an educational degree or three or more years of practice in the field at issue or a related field. Such an appeal must be in writing and received by the Leverett Select Board and a copy received by the Conservation Commission, so as to be received within ten (10) days of the date consultant fees were requested by the Conservation Commission. The required time limits for action upon the application shall be extended by the duration of the administrative appeal.